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 CELIA MCGUINNESS (SBN 159420)
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Attorneys for Plaintiffs
 EDWARD FORBES and MATTHEW FORBES, minors,
 by JENNIFER FORBES as their Guardian Ad Litem

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

EDWARD FORBES and
 MATTHEW FORBES, minors,
 by JENNIFER FORBES as their
 Guardian Ad Litem,

CASE NO. C11-05336 PSG
Civil Rights

Plaintiffs,

v.

**CONSENT DECREE and
~~PROPOSED~~ ORDER REGARDING
 INJUNCTIVE RELIEF, DAMAGES
 and ATTORNEY FEES, LITIGATION
 EXPENSES AND COSTS**

VIVE SOL; HECTOR SOL AND
 HELENA SOL dba VIVE SOL;
 ESKANDER SARRAF; BRIGITTE
 W. SARRAF; and DOES 1-10,
 Inclusive,

Defendants.

1. Plaintiffs EDWARD FORBES and MATTHEW FORBES, minors,
 by JENNIFER FORBES as their Guardian Ad Litem, filed a Complaint in
 this action on November 16, 2011, to obtain recovery of damages for their
 discriminatory experiences, denial of access, and denial of their civil rights,
 and to enforce provisions of the Americans with Disabilities Act of 1990
 ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, and California civil rights laws
 against Defendants VIVE SOL, HECTOR SOL AND HELENA SOL dba
 VIVE SOL, ESKANDER SARRAF, and BRIGITTE W. SARRAF
 (collectively "Defendants"), relating to the condition of Defendants' public

1 accommodations as of July 10, 2011, and continuing. Plaintiffs have
 2 alleged that Defendants violated Title III of the ADA, sections 51, 52, 54,
 3 54.1, 54.3, and 55 of the California Civil Code, and section 19955 *et seq.* of
 4 the California Health & Safety Code by failing to provide full and equal
 5 access to the facilities located at Vive Sol Restaurant, 2020 West El
 6 Camino Real, Mountain View, California.

- 7 2. Plaintiffs and Defendants (collectively “the Parties”) hereby enter into this
 8 Consent Decree and Order for the purpose of resolving the injunctive relief,
 9 damages and attorneys fees aspects of this lawsuit without the need for
 10 protracted litigation.

11
 12 **JURISDICTION:**

- 13 3. The Parties to this Consent Decree and Order agree that the Court has
 14 jurisdiction of this matter pursuant to 28 U.S.C. section 1331 for alleged
 15 violations of the Americans with Disabilities Act of 1990, 42 U.S.C.
 16 sections 12101 *et seq.* and pursuant to supplemental jurisdiction for alleged
 17 violations of California Health & Safety Code sections 19955 *et seq.*; and
 18 California Civil Code sections 51, 52, 54, 54.1, 54.3, and 55.
- 19 4. In order to avoid the costs, expense, and uncertainty of protracted litigation,
 20 the Parties to this Consent Decree and Order agree to entry of this Consent
 21 Decree and Order to resolve all claims regarding injunctive relief, damages
 22 and attorney fees raised in the Complaint filed with this Court.
 23 Accordingly, the Parties agree to the entry of this Order without trial or
 24 further adjudication of any issues of fact or law concerning Plaintiffs’
 25 claims for injunctive relief and damages.

26
 27 WHEREFORE, the Parties to this Consent Decree hereby agree and
 28 stipulate to the Court’s entry of this Consent Decree and Order, which

1 provide as follows:
2

3 **SETTLEMENT OF INJUNCTIVE RELIEF:**

4 5. This Order shall be a full, complete, and final disposition and settlement of
5 all of Plaintiffs' claims against Defendants that have arisen out of the
6 subject Complaint.

7 6. The Parties agree and stipulate that the corrective work will be performed
8 in compliance with the standards and specifications for disabled access as
9 set forth in the California Code of Regulations, Title 24-2, and Americans
10 with Disabilities Act Standards, unless other standards are specifically
11 agreed to in this Consent Decree and Order.

12
13 a.) **Remedial Measures:** The corrective work agreed upon by the Parties is
14 set forth in the report of Plaintiffs' access consultant, Jonathan Adler,
15 attached and incorporated herewith as **Attachment A**. Defendants agree to
16 undertake all of the remedial work as set forth therein, except for those item
17 numbers expressly waived by plaintiffs described in **Attachment B**.

18
19 b.) **Timing of Injunctive Relief:** Defendants will complete corrective
20 work not requiring permits within 30 days of the entry of this Consent
21 Decree and Order by the Court. Defendants will submit plans for all
22 corrective work requiring permits to the appropriate governmental agencies
23 within 30 days of the entry of this Consent Decree by the Court.
24 Defendants will commence permitted work within 20 days of receiving
25 approval from the appropriate agency. Defendants will complete all work
26 by March 31, 2013. In the event that unforeseen difficulties prevent
27 Defendants from completing any of the agreed-upon injunctive relief,
28 Defendants or their counsel will notify Plaintiffs' counsel in writing within

1 five (5) days of discovering the delay. Plaintiffs will have thirty (30) days
 2 to investigate and meet and confer, and to approve the delay by stipulation
 3 or otherwise respond to Defendants' notice. If the Parties cannot reach
 4 agreement regarding the delay within an additional fifteen (15) days,
 5 defendants have the right to seek relief from the Court. Plaintiffs have the
 6 right to oppose the request for relief from the terms of the Consent Decree.

7
 8 c.) **Notification:** Defendants or their counsel will notify Plaintiffs' counsel
 9 when the corrective work is completed. The will provide a status report at
 10 the end of 90 days from the Parties' signing of this Consent Decree and
 11 Order, and every 90 days thereafter until all access is provided. If
 12 Defendants fail to provide injunctive relief on the agreed upon timetable
 13 and/or fail to provide timely written status notification, and Plaintiffs file a
 14 motion with the Court to obtain compliance with these terms, Plaintiffs
 15 reserve the right to seek additional attorney fees for any compliance work
 16 necessitated by Defendants' failure to keep this agreement. If the Parties
 17 disagree, such fees shall be set by the Court.

18
 19 **DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES, AND COSTS:**

20 7. The Parties have reached an agreement as to plaintiffs' damages.
 21 Defendants shall pay to Plaintiffs the amount of \$40,000, \$25,000 to be
 22 paid in trust for Matthew Forbes (who suffered a fall), age 15, and \$15,000
 23 for Edward Forbes, age 16, subject to a minors' compromise approval by
 24 the Court, as full and final resolution of Plaintiffs' claims for all civil
 25 rights, statutory, actual, and personal injury damages, including, but not
 26 limited to, general, compensatory, and special damages. Payment shall be
 27 made by one check made payable to "Paul L. Rein in Trust for EDWARD
 28 FORBES and MATTHEW FORBES, minors, by JENNIFER FORBES as

ENTIRE CONSENT DECREE AND ORDER:

CONSENT DECREE AND ORDER BINDING ON PARTIES AND SUCCESSORS IN INTEREST:

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MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS TO INJUNCTIVE RELIEF ONLY:

11. Each of the Parties to this Consent Decree and Order understands and agrees that there is a risk and possibility that, subsequent to the execution of this Consent Decree and Order, any or all of them will incur, suffer, or experience some further loss or damage with respect to the lawsuit that is unknown or unanticipated at the time this Consent Decree and Order is signed. Except for all obligations required in this Consent Decree and Order, the Parties intend that this Consent Decree and Order apply to all such further loss with respect to the lawsuit, except those caused by the Parties subsequent to the execution of this Consent Decree and Order. Therefore, except for all obligations required in this Consent Decree and Order, this Consent Decree and Order shall apply to and cover any and all claims, demands, actions, and causes of action by the Parties to this Consent Decree with respect to the lawsuit, whether the same are known, unknown, or hereafter discovered or ascertained, and the provisions of Section 1542 of the California Civil Code are hereby expressly waived. Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

This waiver applies to all aspects of this action, including injunctive relief, damages, and attorney fees, litigation expenses, and costs.

12. Except for all obligations required in this Consent Decree and Order each of the Parties to this Consent Decree and Order, on behalf of each, their respective agents, representatives, predecessors, successors, heirs, partners, and assigns, releases and forever discharges each other Party and all

officers, directors, shareholders, subsidiaries, joint venturers, stockholders, partners, parent companies, employees, agents, attorneys, insurance carriers, heirs, predecessors, and representatives of each other Party, from all claims, demands, actions, and causes of action of whatever kind or nature, presently known or unknown, arising out of or in any way connected with the lawsuit. Notwithstanding the foregoing, the Defendants do not waive or release, but instead explicitly preserve, their rights to seek contribution, apportionment, indemnification, and all other appropriate relief from each other in connection with this Lawsuit and settlement thereof.

TERM OF THE CONSENT DECREE AND ORDER:

13. This Consent Decree and Order shall be in full force and effect -- and the Court shall retain jurisdiction of this action to enforce provisions of this Consent Decree and Order -- for a period of eighteen (18) months after the date of entry of this Consent Decree and Order by the Court, or until the injunctive relief contemplated by this Order is completed, whichever occurs later.

SEVERABILITY:

14. If any term of this Consent Decree and Order is determined by any court to be unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain in full force and effect.

SIGNATORIES BIND PARTIES:

15. Signatories on the behalf of the Parties represent that they are authorized to bind the Parties to this Consent Decree and Order. This Consent Decree and Order may be signed in counterparts and a facsimile signature shall

1 have the same force and effect as an original signature.

2
3 Dated: December 21, 2012

PLAINTIFFS EDWARD FORBES and
MATTHEW FORBES, minors,
by JENNIFER FORBES as their Guardian
Ad Litem

4
5
6 
7 By JENNIFER FORBES as Guardian Ad
8 Litem for EDWARD FORBES and
MATTHEW FORBES, minors

9 Dated: December ___, 2012

DEFENDANT VIVE SOL

10 By: _____

11 Print name: _____

12 Title: _____

13
14 Dated: December ___, 2012

DEFENDANT HECTOR SOL dba
VIVE SOL

15
16
17
18 Dated: December ___, 2012

DEFENDANT HELENA SOL dba
VIVE SOL

19
20
21
22 Dated: December ___, 2012

DEFENDANT ESKANDER SARRAF

23
24
25
26 Dated: December ___, 2012

DEFENDANT BRIGITTE W. SARRAF

1 have the same force and effect as an original signature.

2
3 Dated: December __, 2012

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by JENNIFER FORBES as their Guardian
Ad Litem

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5
6
7 By JENNIFER FORBES as Guardian Ad
Litem for EDWARD FORBES and
MATTHEW FORBES, minors

8
9 Dated: December 21, 2012

DEFENDANT VIVE SOL

10 By: 

11 Print name: HELENA SOL

12 Title: OWNER -

13
14 Dated: December 21, 2012

DEFENDANT HECTOR SOL dba
VIVE SOL

15

16

17

18 Dated: December 21, 2012

DEFENDANT HELENA SOL dba
VIVE SOL

19

20

21

22 Dated: December __, 2012

DEFENDANT ESKANDER SARRAF

23

24

25

26 Dated: December __, 2012

DEFENDANT BRIGITTE W. SARRAF

27

28

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2
3 Dated: December ___, 2012

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8 MATTHEW FORBES, minors

9 Dated: December ___, 2012

DEFENDANT VIVE SOL

10 By: _____

11 Print name: _____

12 Title: _____

13
14 Dated: December ___, 2012

DEFENDANT HECTOR SOL dba
VIVE SOL

15
16
17
18 Dated: December ___, 2012

DEFENDANT HELENA SOL dba
VIVE SOL

19
20
21
22 Dated: December ES, 2012 ✓

DEFENDANT ESKANDER SARRAF

Eskander Sarraf

23
24
25
26 Dated: December 13, 2012 ✓

DEFENDANT BRIGITTE W. SARRAF

Brigitte W. Sarraf

Dec. 14. 2012 6:19PM

No. 2955 P. 3

1 APPROVED AS TO FORM:

2 Dated: December 31, 2012

LAW OFFICES OF PAUL L. REIN

3
4
5 By: Paul L. Rein
6 PAUL L. REIN, Esq.

Attorney for Plaintiffs

EDWARD FORBES and MATTHEW

FORBES, minors by JENNIFER FORBES
as their Guardian Ad Litem7
8
9 Dated: December 14, 2012

STRATMAN, PATTERSON & HUNTER

10 *With exception to part of paragraph 7 (line 27, page 4), payment might be made with more
than one check. A*11
12 By: John Hourihan
13 JOHN HOURIHAN, Esq.

Attorney for Defendants

VIVE SOL; HECTOR SOL AND

HELENA SOL dba VIVE SOL

14
15 Dated: December __, 2012

LAW OFFICES OF JASON T. BAKER

16
17 By: Jason T. Baker
18 JASON T. BAKER, Esq.

Attorney for Defendants

ESKANDER SARRAF AND BRIGITTE

W. SARRAF

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LAW OFFICES OF
PAUL L. REIN
200 LAKESIDE DR., SUITE A
OAKLAND, CA 94612-3503
(510) 832-5001CONSENT DECREE AND ~~PROPOSED~~ ORDER
CASE NO. C11-05336 PSG

1 APPROVED AS TO FORM:

2 Dated: December ___, 2012

LAW OFFICES OF PAUL L. REIN

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Dated: December ___, 2012

STRATMAN, PATTERSON & HUNTER

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Dated: December 13, 2012

LAW OFFICES OF JASON T. BAKER

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By: PAUL L. REIN, Esq.
Attorney for Plaintiffs
EDWARD FORBES and MATTHEW
FORBES, minors by JENNIFER FORBES
as their Guardian Ad Litem

By: JOHN HOURIHAN, Esq.
Attorney for Defendants
VIVE SOL; HECTOR SOL AND
HELENA SOL dba VIVE SOL


By: JASON T. BAKER, Esq.
Attorney for Defendants
ESKANDER SARRAF AND BRIGITTE
W. SARRAF

ORDER

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

January 14, 2013

Dated: ~~December~~ ~~xxxxxx~~, 2012


PAUL SINGH GREWAL
United States Magistrate Judge

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